THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2092 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioner/A-3 on bail, in the event of her arrest in connection with Crime No.243 of 2016 on the file of Dwaraka Police Station, Visakhapatnam City, registered for the offences punishable under Sections 420, 468 & 471 of Indian Penal Code (for short 'IPC').

The defacto complainant lodged a complaint alleging that he paid an amount of Rs.22,50,000/- through various cheques on various dates to one Dream Homes Projects and Developers for the purpose of purchasing Plot Nos.14 & 15 of an extent of 400 sq yds in Sai Sampath Nivas layout in Sy.No.32/2 P, Nidigattu Village Panchayat, Bheemili Mandal. It is stated in the complaint that when the defacto complainant demanded for registration of the said plots, the said firm delayed the registration on pretext of auspicious time for registration and sent an MOU agreement dated 04.12.2015. Further, it is stated that the said plots were already transferred in favour of A-1 & A-2 on 20.07.2015 by way of registered sale deed No.4145/2015 and 4143/2015 conveying the property and delivered possession of Plot Nos.14 & 15 by the

Managing Director and Co-Director/the petitioner herein. Further, it is stated that the Executive Manager and the Accountant of the said firm have colluded and became an illegal group on the name of real estate, thereby forged Will and fabricated documents and using them as real documents.

It is the contention of the learned counsel for the petitioner that she is no way concerned with the offence and she is not a party to the MOU dated 04.12.2015, thereby, she cannot be made criminally liable.

Learned Public Prosecutor for the State of Andhra Pradesh opposed the application on the ground that the petitioner also executed MOU and produced copy of MOU dated 19.06.2015 executed by the petitioner and her husband.

The material on record clearly show that the defacto complainant paid an amount of Rs.22,50,000/- towards sale consideration out of Rs.24,00,000/- and requested to execute sale deed conveying title of Plot Nos.14 & 15 in his favour.

The learned counsel for the petitioner contended that they sold the property to some other person, as the defacto complainant failed to pay the requisite amount within the time prescribed to obtain registered sale deed. But, copy of the MOU is not brought on record by any of the parties. The MOU agreement dated 04.12.2015 is filed along with the petition where the petitioner acknowledged receipt of Rs.2,000/- towards admission fee vide receipt Nos.69 & 70 and Rs.20,98,000/- through cash and bank receipts nos.69,70,85,86,224,265,266,290,291,293,294,295, 296 towards payment. The second party/defacto complainant has agreed to pay the balance amount of Rs.2,62,000/- paid and get the plot registered on or before 31.01.2016 and the registration charges are to be borne by the purchaser i.e. defacto complainant.

M/s Dream Homes Projects and Developers is a partnership firm registered with Registrar of Firms, Visakhapatnam and this petitioner is also a partner of the firm. The acts of the firm are binding on the partners. The partnership agreement and registration certificate would clinchingly establish that the petitioner is a partner of the firm and her husband is the Managing Partner. The husband of the petitioner being the Managing Partner of the firm, executed a document and sold the property on the pretext that the defacto complainant failed to pay the balance amount towards sale consideration within the prescribed time, would certainly amount to offence punishable under Section 420 IPC, as the petitioner along with her husband executed documents for the same property even before expiry of time fixed in MOU i.e. 31.01.2016, but executed documents on 20.07.2015.

The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia and Ors v. State of Punjab**[1] case, as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The

[1] AIR 1980 SC 1632

nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no concern for grant or refusal of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in **Gurbaksh Singh Sibbia[1]** case.

On the strength of the same principles in **Jai Prakash Singh v. State of Bihar[2]**, the Supreme Court held that Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been

2 AIR 2012 SC 1676

enroped in the crime and would not misuse his liberty. The Courts are expected to deal with very serious matters seriously, but not in casual and cavalier manner and grant of anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague and Court must not yield to spasmodic sentiment to unregulated benevolence. Any order dehors grounds provided in Section 438 of CrPC is illegal.

Keeping in view the various principles enunciated by the Apex Court in the various judgments referred supra, to grant pre-arrest bail to any accused in a cognizable office, the Court must records its satisfaction that there is no *prima facie* material to conclude that the petitioner did commit no offence and that there is no possibility of the accused tampering the evidence and interfering with the investigation and that the accused will not threaten the witness and cooperate with the Investigating Agency to complete the investigation.

In the present facts of the case, the petitioner being partner of the firm, along with Managing Partner i.e. her husband having received Rs.22,50,000/- failed to execute registered sale deed and on the other hand, conveyed the property in the name of third parties on 20.07.2015 though agreed to execute sale deed on receipt of balance of sale consideration on or before 31.01.2016. Therefore, such act would clearly amount to an offence of cheating with dishonest intention to part with huge amount by the defacto complainant, thereby, the petition deserves to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this petition, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.04.2017

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